F. M. S. REPORTS.

[APPELLATE CRIMINAL JURISDICTION]

CUSSEN, J.

J. ROWLAND v. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL

No. 82 of 1939]

Excise Enactment (Cap. 133) S. 67, Rule 92—possession of adulterated toddy—proof of mens rea unnecessary.

In a prosecution for being in possession of toddy to which water has been added, an offence under Rule 92 and Section 67 of the Excise Enactment, it is unnecessary to prove **mens rea** in order to secure a conviction under the section, the prohibition contained in Rule 92 being an absolute one.

Ong Aik Phow v. Rex,(1) and **R. v. G. H. Kiat,**(3) applied.

Cases referred to:—

(1) *Ong Aik Phow v. Rex,* 6 M.L.J 76.

(2) *Parker v. Alder,* 1899 Q.B.D. 20.

(3) *Rex v. G. H. Kiat,* 7 M.L.J. 150.

MAGISTRATE'S CRIMINAL APPEAL.

A. K. Sen for the Appellant.

A. J. Grattan-Bellew, Deputy Public Prosecutor, for the Public Prosecutor.

Cussen, J.—This Appellant was convicted under the provisions of Rule 92 and Section 67 of the Excise Enactment and fined $250/-.

Rule 92 reads:—

"No Licensee and no person employed by the Government for the sale of Toddy shall have in his possession whether upon licensed premises or elsewhere any toddy to which there has been added any water, alcohol, or sugar."

Under Section 67:—

"Every omission or neglect to comply with and every act done or attempted to be done contrary to the provisions of this Enactment or of any Rule or Regulation duly made thereunder..... shall be deemed to be an offence."

The question was raised whether the appellant was in possession of the toddy—the subject matter of the charge. A quantity of toddy to which water had been added was found in the Government Toddy-shop of which the appellant was the Manager. He himself states in his evidence that his duty was "to receive toddy from the toddy contractor, ... and sell toddy to the public with the assistance of my salesman."

I have no doubt that he was in possession of the toddy within the meaning of the Rule.

It was argued that it was the Licensee who had possession by his Agent or servant—the appellant.

That is clearly the case as regards the Licensee of a non-Government Toddy-shop; in which case the general provisions of Section 66 of the Enactment render both the Licensee and his servant or Agent liable.

Section 66 reads:—

"Whenever any person licensed under this Enactment would be liable under the provisions of this Enactment, or of any Rules or regulations made thereunder, to any punishment, penalty or forfeiture for any act, omission, neglect or default, he shall be liable to the same punishment, penalty or forfeiture for every similar act, omission, neglect or default of any agent or servant employed by him in the course of his business as such licensed person, and every agent or servant employed by a person licensed under this Enactment, in the course of his business as such licensed person, shall also be liable to every punishment, penalty or forfeiture, prescribed for such acts, omissions, neglect or default contrary to the provisions of this Enactment or of any Rules or regulations made thereunder, as fully and effectually as if such agent or servant had been the person to whom the licence had been granted."

Why, in view of this section, Rule 92 expressly provides for the liability of the employee-salesman in the case of Government Toddy-shops is not quite clear; and it is unnecessary for me to decide whether (which is one possible object of this provision) it has the effect of relieving from liability the Licensee of the Government Toddy-shop, who, I am informed by Counsel, is the Superintendent of Customs.

The next question arising on this Appeal, and it is a very important one, is whether the prohibition in this Rule is an absolute one, and so the existence or non-existence of "*mens rea*"—knowledge—is immaterial to the commission of the offence—though proved absence of "*mens rea*" may be a factor to be considered when assessing the sentence.

I need not set out the decided cases bearing upon this question nor at any length the principle of interpretation to be applied.

Both are fully dealt with in the Straits Settlements Case of *Ong Aik Phow v. Rex,*(1) cited by Counsel. The Straits Settlements Case of *Rex v. G. H. Kiat*(3) was also referred to.

The principle is that what the Court must consider is (1) the actual words of the Section and (2) the nature of the subject matter and the scope and object of the legislation.

As far as the language of this Rule goes, it is clearly an absolute prohibition.

Again this Rule 92 is one made under Section 77 (1) (z) of the Enactment which gives power to make Rules "generally to give effect to the provisions of this Enactment."

What then is the provision of the Enactment to give effect to which this Rule has been made?

It is, I think, abundantly clear that what is aimed at in the prohibition of *possession* of toddy to which water has been added is the protection of the rights of the purchaser—the persons who come and buy such toddy at the Toddy-shop and that therefore this Rule is in aid of and to give effect to the provisions of Section 74 (ii) i.e.

> "No person shall sell to the prejudice of the purchaser any intoxicating liquor which is not of the nature and quality demanded by such purchaser;"

The purchaser at the Toddy-shop asks for toddy, not for toddy to which water has been added.

In Section 2 of the Enactment "toddy" is defined as "the juice of the coconut". When a purchaser buys toddy he expects to receive a liquor which is the juice of the coconut and that only; and he is defrauded if he is supplied with juice to which water has been added.

Now this case seems to be exactly covered by the case of *Parker v. Alder*[2].

That was a case where a milk salesman contracted to supply pure milk to an Association to be delivered at a Railway Terminus in London. He delivered the milk pure and unadulterated to the Railway at a local station for transport to London. It was adulterated without his knowledge during transit. A sample was found to contain 9% of added water.

He was held liable irrespective of any *"mens rea."*

The prosecution was under Section 6 of the Sale of Food and Drugs Act 1878 which reads:—

> "No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser."

I arrive, therefore, both from a consideration of the authorities and from application of the general principle at the conclusion that the prohibition in Rule 92 is an absolute one—and an offence is committed even though the Licensee or Salesman has no knowledge that the toddy contains added water.

The milk contractor was held liable for the adulteration done after the milk had passed from his possession and from his control; the toddy licensee or salesman is in the same way liable for adulteration done before the toddy comes into his possession and under his control.

I might point out that Section 67 speaks of "Every omission or neglect to comply with and every act done or attempted to be done contrary to the provisions of this Enactment or of any rule . . . ."

The language is not very appropriate when applied to "possession." It is hardly omission or neglect but can I think be considered as an "act done."

Conviction upheld but the fine reduced from $250/- to $5/- as there was no evidence to show that the appellant was a party to the adding of water to the toddy or had any knowledge of the fact.

Conviction upheld. Sentence reduced.

[SPECIAL JURISDICTION]

MURRAY-AYNSLEY, J.

February 5, 1940.

THE COLLECTOR OF LAND REVENUE, KUALA KANGSAR

(Applicant*)

v.

LOW KEE & OTHERS

(Respondents).

[PERAK CIVIL APPLICATION No. 19 of 1939]

Land Acquisition Enactment (Cap. 140)—Acquisition of land held on non-mining title—value of minerals.

When acquisition proceedings are taken in respect of land held on a non-mining title the presence of minerals in the land is no ground for increasing the collector's award.

Case referred to:—

(1) *Sri Raja v. Revenue Officer,* (1939) 2 A.E.R. 317.

REFERENCE by the Collector of Land Revenue, Kuala Kangsar under section 22 of the Land Acquisition Enactment (Cap. 140). The collector's award was $600/- (to be paid to the chargee) plus $50/- for moving a hut. Evidence was given on behalf of the respondents of mineral values obtained by boring the land and of the probable value of the tin content and on behalf of the collector, of recent transfers at the price now offered by the collector's award.

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*[The Collector was the applicant in these proceedings though section 22 et seqq. of the Enactment refer to the persons interested in the land as "the applicant."—Ed. M.L.J.]